

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Amendment of Section 73.622(i))
Post-Transition Table of DTV Allotments)
(Bridgeport and Stamford, Connecticut))

MB Docket No. 18-126

RM-11800 **Accepted / Filed**

JUN -3 2019

To: Secretary, FCC
For: The Commission

Federal Communications Commission
Office of the Secretary

OPPOSITION TO APPLICATION FOR REVIEW

Connecticut Public Broadcasting, Inc. ("CPBI"), licensee of noncommercial educational television station WEDW(TV), Stamford, Connecticut, Facility ID No. 13594 ("WEDW"), by its counsel and pursuant to Section 1.115(d) of the Commission's rules,¹ hereby submits this Opposition ("Opposition") to the Application for Review ("AFR") filed May 17, 2019, by PMCM TV, LLC ("PMCM"). PMCM seeks review of the *Report and Order*, DA 19-264, released April 8, 2019 (the "*R&O*"), in which the Video Division ("Division") granted CPBI's request to amend the DTV Table of Allotments² to delete Channel *49 at Bridgeport, Connecticut, and substitute Channel *49 at Stamford, Connecticut.

I. Background

In the *R&O*, the Division properly recognized that moving WEDW's Channel *49 from Bridgeport to Stamford, Connecticut, will result in a preferential arrangement of allotments. The change in community of license will bring first local television service to Stamford, the third largest city in Connecticut and the seventh largest city in New England. Removing Channel *49

¹ 47 C.F.R. § 1.115(d).

² 47 C.F.R. § 73.622(i).

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from Bridgeport will not leave it without its own television station as WEDW's channel sharing partner, WZME, licensed to NRJ TV NY License Co., LLC, will remain licensed to Bridgeport. This reallocation is possible without any change in authorized technical facilities of WEDW and complies with the Commission's principal community coverage requirements.³

In the AFR, PMCM complains that the Division did not take into account authorized and proposed changes in WEDW's technical facilities in determining 1) whether the community change met the Commission's freeze order;⁴ and 2) whether the Division improperly credited coverage of WEDW's sister station in determining whether there was a loss of service.⁵ PMCM uses its AFR as a vehicle to collaterally attack WEDW's granted modification application, which is already final,⁶ and CPBI's application to use a Distributed Transmission System ("DTS")⁷ which is pending in another proceeding and also opposed by PMCM.

The Division correctly determined in the *R&O* that WEDW did not need to move its currently authorized facilities in Bridgeport to support a grant of the community change.⁸ Nor does its currently authorized "final" construction permit need to be modified to support that change of community. And, the community change does not depend on the Commission's action on WEDW's DTS application.⁹ As the Division found, the change results in a preferential

³ *R&O* at ¶ 7.

⁴ In fact, the freeze had already been lifted by the time of the action in the *R&O*. *R&O* at ¶ 7.

⁵ AFR, p. 1.

⁶ See LMS File No. 0000034869, extension pending in LMS File No. 0000072189.

⁷ See LMS File No. 0000036047.

⁸ See LMS File No. 0000029810.

⁹ *R&O* at ¶ 9.

arrangement of allotments by providing first service to Stamford without leaving Bridgeport without its own television service, and without requiring any technical changes.¹⁰

II. Discussion

In *Media Bureau Partially Lifts the Freeze on the Filing of Petitions for Rulemaking to Change Full Power Television Stations' Community of License*, DA 18-40, released January 12, 2018, the Bureau determined that it would no longer require a waiver request with a petition to change community of license if such change of community did not also require a technical change.¹¹ CPBI's petition required no concurrent technical change to satisfy the community of license change standards. PMCM's freeze waiver argument, however, conflates CPBI's request for a community of license change with its subsequently filed and granted construction permit. PMCM admits: "Here the technical change authorizing relocation to Stamford was not required to accomplish the community of license change. . . ."¹² Instead, PMCM wants the Commission to evaluate the gain and loss of coverage from an entirely separate application (which PMCM did not contest) which is a final authorization. PMCM must not be allowed to launch a side attack on that authorized construction permit in this separate proceeding after the prior grant has become final.¹³

¹⁰ *R&O* at ¶ 8.

¹¹ Incidentally, CPBI filed a request for waiver of the freeze when it filed its Petition for Rulemaking before the freeze was lifted.

¹² AFR, p. 4.

¹³ *See* 47 U.S. Code § 405.

The WEDW license, as well as its construction permit, are both considered authorizations by the Commission. Both satisfy on their own independent merits the requirements for the change in community.¹⁴

Nevertheless, CPBI continues to submit, as previously stated in its Reply Comments filed August 20, 2018, at footnote 3, that the “change in community of license requested in this proceeding is a separate matter from that permit and was not required for its grant. Further, the Commission will consider the pending DTS application in due course on its own merits, and that application also has no bearing on the [change in community of license] request.”

The Commission should not be tempted to speculate on all the various future possible changes that could happen in the life of a station’s technical facilities. Rather, as the Division did in the *R&O*, the Commission should decide the proceeding on the facts before it.

PMCM raised no new facts in its AFR. The Division already disposed of all the arguments PMCM offered in its Comments about WEDW’s construction permit for a Stamford site and about the pending DTS application. In the AFR, however, PMCM re-argues the same “me too” argument¹⁵ about “opening the floodgates” to similar proposals¹⁶ which the Division rightly considered “speculative at best.”¹⁷

¹⁴ Although PMCM wants them considered together, it cannot have it both ways unless one also accounts for the positive merits of the CPBI’s DTS application.

¹⁵ AFR, p. 6.

¹⁶ Comments of PMCM, dated August 6, 2018, at 6.

¹⁷ *R&O* at ¶ 10.

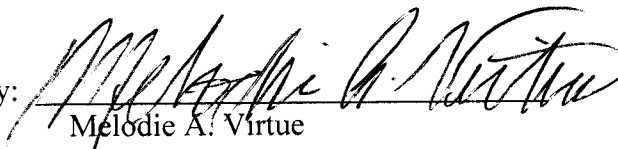
As for PMCM's argument that the Division improperly credited WEDW with service provided by its sister station, PMDM points to dicta in footnote 30 of the *R&O* relating to WEDW's already-granted construction permit that was not part of this community of license change proceeding.¹⁸ As an aside, the Division acknowledged that the areas of loss from the construction permit were well served by other CPBI programming. Crediting WEDW's sister station with fill-in service was not needed for the Division to approve the community change based on the fact that WEDW's existing licensed facilities as well as the facilities authorized in its separate construction permit provided community coverage to Bridgeport and Stamford without requiring any technical changes. PMCM wants the FCC to engage in speculation about what might happen with future technical changes completely unrelated to the basic requirements, met here, to approve a change in community of license.

IV. Conclusion

For the reasons set forth above, CPBI requests that the Commission affirm the *R&O* and deny PMCM's AFR.

Respectfully submitted,

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¹⁸ AFR at 7.

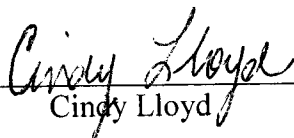
CERTIFICATE OF SERVICE

I, Cindy Lloyd, certify that a copy of the attached Opposition to Application for Review of Connecticut Public Broadcasting, Inc., was sent June 3, 2019, by first class mail, postage prepaid, and emailed to the following:

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I further certify that a copy of the foregoing document was emailed to the following:

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Cindy Lloyd